

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
:
:
-v.- : **09 Cr. 213 (DC)**

BERNARD L. MADOFF, :
:
Defendant. :
----- x
:
ROBERT A. BAIRD and
RANDY MORRISON BAIRD, :
:
Interested Parties. :
----- x

**GOVERNMENT'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS THE PETITION
OF ROBERT A. BAIRD AND RANDY MORRISON BAIRD**

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Assistant United States Attorneys

- Of Counsel -

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The Government respectfully submits this reply in support of its motion to dismiss the petition filed on or about February 14, 2011 (the "Petition") by Robert A. Baird and Randy Morrison Baird ("Petitioners") and in reply to Petitioners' response by letter dated March 23, 2011.

Petitioners assert that they would never have given the African mask sculpture to Madoff had they known of the fraud. This claim – which could be made by any investment advisory ("IA") client of Madoff who was without reason to know of the fraud – does not satisfy the narrow criteria for recovery in the ancillary proceedings. Under 21 U.S.C. § 853(n)(6), such IA

clients, including Petitioners, lost title to the property when they gave it to Madoff (or his wife) even if they would not have done so had they known about Madoff's massive fraud.

Not all of the personal property of Madoff and his wife (for example, the contents of their Palm Beach home) has been sold. Others may come forward with similar claims – even as to their investments. The legal principles set forth in the Government's motion must be applied evenhandedly, particularly in situations such as these. Accordingly, for the reasons set forth in the memorandum of law submitted in support of the Government's motion to dismiss, the Government respectfully submits that the Petition should be denied in its entirety.¹

Dated: New York, New York
April 8, 2011

Respectfully submitted,

PREET BHARARA
United States Attorney

By: _____/s/
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Matthew L. Schwartz
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¹ Should the Court grant the Government's motion to dismiss, the African mask sculpture will be auctioned together with other forfeited Madoff assets. It has been the United States Marshals Service's practice, in this case and others, to sell personal property either in an online auction or by live auction with simultaneous online bidding. Petitioners would not be precluded from bidding when the sculpture comes up for sale.